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**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

December 21, 2017

Steve Essoyan, Regional President  
Steve Azevedo, California Environmental  
Manager  
David Smith, Site Manager  
DSS Co. dba Knife River Construction  
655 W. Clay Street  
Stockton, CA 95206

Steve Essoyan, Regional President  
Steve Azevedo, California Environmental  
Manager  
David Smith, Site Manager  
DSS Construction Inc. dba Knife River  
Company  
655 W. Clay Street  
Stockton, CA 95206

Steve Essoyan, Regional President  
Steve Azevedo, California Environmental  
Manager  
David Smith, Site Manager  
Knife River Construction – Stockton  
655 W. Clay Street  
Stockton, CA 95206

David C. Barney, President and CEO  
Knife River Corporation  
1150 W Century Avenue  
Bismarck, ND 58503

David C. Barney, President and Chief  
Executive Officer  
Knife River Corporation – Northwest  
c/o Knife River Corporation  
1150 W Century Avenue  
Bismarck, ND 58503

**VIA FIRST CLASS MAIL**

CT Corporation System  
Agent for Service of Process for  
Knife River Corporation – Northwest  
818 W. 7th St., Suite 930  
Los Angeles, CA 90017

CT Corporation System  
Agent for Service of Process for  
Knife River Corporation  
818 W. 7th St., Suite 930  
Los Angeles, CA 90017

**Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act**

Notice of Violations and Intent to File Suit

Messrs. Steve Essoyan, et al.  
Knife River Construction  
December 21, 2017  
Page 2 of 17

Dear Messrs. Essoyan, Azevedo, Smith and Barney:

I am writing on behalf of California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Clean Water Act (the “Act”) that CSPA believes are occurring at your industrial facility located at 655 W. Clay Street in Stockton, California (“Facility”). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Joaquin River, the Sacramento-San Joaquin Delta and other California waters. This letter is being sent to the owners and operators of all facilities located at 655 W. Clay Street, Stockton, California, including but not limited to, DSS Co. dba Knife River Construction, DSS Construction Inc. dba Knife River Company, Knife River Construction – Stockton, Knife River Corporation, Knife River Corporation – Northwest, Steve Essoyan, Steve Azevedo, and Dave Smith. These are the entities and individuals identified in various filings submitted by the facility to the State Water Resources Control Board (“State Board”) and California Regional Water Quality Control Board, Central Valley Region (“Regional Board”). CSPA is informed and believes that one or more of the entities and individuals are the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as “Knife River Construction”).

This letter addresses Knife River Construction’s unlawful discharge of pollutants from the Facility to the City of Stockton’s municipal storm drain system, which drain to Mormon Slough or other nearby waters which flow to the San Joaquin River and then into the Sacramento-San Joaquin River Delta. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA S000001, State Water Resources Control Board (“State Board”) Order No. 97-03-DWQ (“1997 Permit”) as renewed by Order No. 2015-0057-DWQ (“2015 Permit”). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CSPA refers to the 1997 and 2015 Permits in this letter collectively as the “General Permit.” The Waste Discharger identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Central Valley Region (“Regional Board”) and the State Board is 5S391020214. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”) and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CSPA hereby places Knife River Construction on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Knife River Construction under Section 505(a) of the

Notice of Violations and Intent to File Suit

Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## **I. Background.**

In its Notice of Intent to Comply with the Terms of the General Permit (“NOI”), Knife River Construction certifies that the Facility is classified under SIC code 3531. The Facility collects and discharges storm water from its 6.3 acre industrial site through at least five storm drains. The drains discharge to the City of Stockton’s municipal storm drain, which flows into the San Joaquin River, and then into the Sacramento-San Joaquin Delta (“Delta”).

The Regional Board has identified beneficial uses of the Central Valley Region’s waters and established water quality standards for the San Joaquin River and its tributaries, and the Delta, in “The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin,” generally referred to as the Basin Plan. *See* [http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/sacsjr.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf). The beneficial uses of these waters include, among others, domestic and municipal supply, water contact recreation, non-contact water recreation, wildlife habitat, warm and cold freshwater habitat, and fish spawning. The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” Basin Plan at II-1.00 – II-2.00. Visible pollution, including cloudy or muddy water from industrial areas, impairs people’s use of the San Joaquin River, and the Delta for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the San Joaquin River and its tributaries and the Sacramento-San Joaquin Delta. It includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” *Id.* at III-8.01. It provides that “[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses.” *Id.* at III-5.00. It provides that “[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses.” *Id.* It provides that “[w]aters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at III-7.00. The Basin Plan further requires that “[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at III-9.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.*

Table III-1 of the Basin Plan provides a water quality objective (“WQO”) for iron of 0.3 mg/L.

The Basin Plain provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs) specified in the following provisions of Title 22 of the California Code of Regulations, which are incorporated by reference into this plan: Tables 64431-A (Inorganic Chemicals) and 64431-B (Fluoride) of Section 64431, Table 64444-A (Organic Chemicals) of Section 64444, and Tables 64449-A (Secondary Maximum Contaminant Levels-Consumer Acceptance Limits) and 64449-B (Secondary Maximum Contaminant Levels-Ranges) of Section 64449.” *Id.* at III-3.00. Table 64449-A provides Secondary MCLs (“SMCL”) for iron of 0.3 mg/L.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).<sup>1</sup> The following benchmarks have been established for pollutants discharged by Knife River Construction: pH – 6.0 - 9.0 standard units (“s.u.”) and total suspended solids (“TSS”) – 100 mg/L. In addition, as a result of the industrial activities occurring at the Facility, CSPA is informed and believes that the Facility may be discharging iron and other metals. EPA has established a benchmark of 1.0 mg/L for iron.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L and iron – 1.0 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease (“O&G”) – 25 mg/L.

## **II. Alleged Violations of the NPDES Permit.**

### **A. Discharges in Violation of the Permit.**

Knife River Construction has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for

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<sup>1</sup> The Benchmark Values can be found at:  
[http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf).



toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Knife River Construction has discharged and continues to discharge storm water with unacceptable levels of TSS and iron in violation of the General Permit. Knife River Construction's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value /Annual NAL	Outfall (as identified by the Facility)
12/15/2016	Total Suspended Solids	482 mg/L	400 mg/L	SS#4

2016-2017 reporting year	Total Suspended Solids	245.9 mg/L	100 mg/L	SS#3, SS#4 <sup>2</sup>
11/02/2015	Total Suspended Solids	1210 mg/L	100 mg/L	SS#4
2015-2016 reporting year	Total Suspended Solids	400.5 mg/L	100 mg/L	SS#3, SS#4 <sup>3</sup>
2014-2015 reporting year	Total Suspended Solids	105 mg/L	100 mg/L	SS#3, SS#4 <sup>4</sup>

The information in the above table reflects data gathered from Knife River Construction's self-monitoring during the 2014-2015 wet season and the 2015-2016 and 2016-2017 reporting years. CSPA notes that Knife River Construction's sampling results from the 2015-2016 reporting year have now placed the Facility in Level 1 Status pursuant to the General Permit. Given the nature of the industrial activities at the Facility, CSPA is informed and believes and thereupon alleges that the Facility also discharges iron in its storm water. CSPA alleges that since at least December 21, 2012, Knife River Construction has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for TSS and iron.

CSPA's investigation, including its review of Knife River Construction's Storm Water Pollution Prevention Plan ("SWPPP"), Knife River Construction's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable EPA benchmark values and NALs, indicates that Knife River Construction has not implemented BAT and BCT at the Facility for its discharges of TSS and potentially other pollutants, including iron, in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Knife River Construction was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Knife River Construction is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including on information

<sup>2</sup> This value is represents the average of all TSS measurements taken at the Facility during the 2016-2017 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

<sup>3</sup> This value is represents the average of all TSS measurements taken at the Facility during the 2015-2016 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

<sup>4</sup> This value is represents the average of all TSS measurements taken at the Facility during the 2014-2015 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

and belief every significant rain event that has occurred since December 21, 2012, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Knife River Construction has discharged storm water containing impermissible and unauthorized levels of TSS and iron in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.<sup>5</sup>

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of TSS and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Knife River Construction is subject to penalties for violations of the General Permit and the Act since December 21, 2012.

#### **B. Failure to Conduct Sampling and Analysis.**

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. *See* 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. *See* 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that BMPs are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

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<sup>5</sup> The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Stockton in close proximity to the Facility or samples were taken of stormwater discharging from the facility. The data was accessed via <https://www.ncdc.noaa.gov/cdo-web/search?datasetid=GHCND> (Last accessed on December 8, 2017).

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operator must still collect samples from two other storm events and “shall explain in the Annual Report why the first storm event was not sampled.” *See* 1997 Permit, § B(5)(a). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). The 2015 Permit shortens the preceding no discharge period to 48 hours. *See* 2015 Permit, § XI(B)(1). Samples must be collected from each drainage area at all discharge locations, with some exceptions, and be representative of storm water associated with the Facility’s industrial activity and any commingled discharges. *See* 2015 Permit, § XI(B)(4); *see also* 1997 Permit § B(5)(a).

On information and belief, CSPA alleges that during the 2015-2016 and 2016-2017 reporting years, Knife River Construction failed to collect and analyze storm water samples from four storm events at Outfall SS#4. For each of those two reporting years, Knife River Construction only took two of the four required samples at SS#4. CSPA is informed and believes, and thereupon alleges that local precipitation data compared to dates when the Facility did collect storm water samples shows that discharges occurred on several dates during those wet seasons on which the Facility was open. Specifically, CSPA is informed and believes and thereupon alleges that discharges occurred on the following dates where discharges occurred during the Facility’s operating hours but a storm water sample was not taken at Outfall SS#4 the Facility:

- May 31, 2017
- April 17, 2017
- April 13, 2017
- April 7, 2017
- March 21, 2017
- February 2, 2017
- December 23, 2016
- December 8, 2016
- October 25, 2016
- October 15, 2016
- October 3, 2016
- May 7, 2016
- April 23, 2016
- April 14, 2016



- April 9, 2016
- March 5, 2016
- February 18, 2016
- January 30, 2016
- January 23, 2016
- January 13, 2016
- January 4, 2016
- January 5, 2016
- December 28, 2015
- December 19, 2015
- December 14, 2015
- December 11, 2015
- December 3, 2015
- December 4, 2015
- November 25, 2015
- November 9, 2015
- October 1, 2015

Discharges also may have occurred on other dates when qualifying rain events occurred at the Facility.

Because Knife River Construction failed to take four storm water samples for the entire 2015-2016 and 2016-2017 reporting years at Outfall SS#4, Knife River Construction has violated the General Permit's monitoring requirement for that entire period, amounting to at least 730 violations of the Act. These violations of the General Permit are ongoing. Knife River Construction is subject to penalties for each of those daily violations of the General Permit and the Act's monitoring and sampling requirements.

**C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.**

Under the General Permit, the State Board has designated the SWPPP as one of the cornerstones of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations, as well as the BAT/BCT requirement. To ensure compliance with the General

Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. *See* 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be sufficiently robust to meet the General Permit's and 33 U.S.C. ¶ 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent Limitation B(3), Receiving Water Limitation C(3).

Dischargers must prepare "a site map that includes notes, legends, a north arrow, and other data as appropriate to ensure the map is clear, legible and understandable." 2015 Permit, ¶ X.E.1. The map must include "[t]he facility boundary, storm water drainage areas within the facility boundary, and portions of any drainage area impacted by discharges from surrounding areas." *Id.*, ¶ X.E.3.a. The map must "[i]nclude the flow direction of each drainage area, on-

facility surface water bodies, areas of soil erosion, and location(s) of nearby water bodies (such as rivers, lakes, wetlands, etc.) or municipal storm drain inlets that may receive the facility's industrial storm water discharges and authorized NSWDS....” *Id.* The map must show the “[l]ocations of storm water collection and conveyance systems, associated discharge locations, and direction of flow [and] [i]nclude any sample locations if different than the identified discharge locations. *Id.*, ¶ X.E.3.b. The “[l]ocations and descriptions of structural control measures that affect industrial storm water discharges, authorized NSWDS, and/or run-on” must be depicted on the map. *Id.*, ¶ X.E.3.c. “[A]ll impervious areas of the facility, including paved areas, buildings, covered storage areas, or other roofed structures” must be identified on the map. *Id.*, ¶ X.E.3.d. The location of spills and leaks must be shown. *Id.*, ¶ X.E.3.e. Lastly, the map must identify “[a]reas of industrial activity subject to this General Permit. Identify all industrial storage areas and storage tanks, shipping and receiving areas, fueling areas, vehicle and equipment storage/maintenance areas, material handling and processing areas, waste treatment and disposal areas, dust or particulate generating areas, cleaning and material reuse areas, and other areas of industrial activity that may have potential pollutant sources. *Id.*, ¶ X.E.3.f.

Despite these clear SWPPP requirements, Knife River Construction has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

Knife River Construction's SWPPP maps are neither clear nor understandable and hence inconsistent with Section X(E) of the 2015 Permit. Although the maps' legend includes a symbol for identifying the sample locations, the symbol does not appear on the provided maps. The depicted drainage areas do not appear to encompass the entire Facility and are incomplete. Although the maps identify paved areas and buildings, the maps do not indicate which areas outside of those paved areas are impervious or not. No structural control measures to prevent run-on are depicted on the maps.

The SWPPP fails to comply with the requirements of Section X(G)(2) of the 2015 Permit. Knife River Construction has failed to identify where the minimum BMPs in different areas of the Facility will not adequately reduce the pollutants in the Facility's storm water dischargers and to identify advanced BMPs for those areas.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement required advanced BMPs. Relatedly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges consistent with the BAT and BCT requirements. Despite these exceedances, Knife River Construction has failed to sufficiently update the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges consistent with reductions achieved by implementing BAT and BCT at the Facility.

CSPA puts Knife River Construction on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CSPA will include additional violations as information and data become available. Knife River Construction is subject to civil penalties for all violations of the CWA occurring since December 21, 2012.

**D. Failure to Comply with 2015 Permit Evaluation and ERA Requirements.**

On or about November 10, 2016, Knife River Construction submitted an “Exceedance Response Action Evaluation and Report Level One” to the State Board’s SMARTs system. The ERA Report and Level One status are triggered by exceedances of the NALs adopted in the 2015 General Permits. The ERA Level One report must, among other requirements, “[i]dentify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of this General Permit.” 2015 Permit, § VII.C.1.c.

Knife River Construction’s ERA Level 1 report addresses the Facility’s exceedance of the instantaneous NAL for TSS of 400 mg/L during the 2015-2016 reporting year. The ERA Level 1 report does not mention or address the Facility’s exceedance of the annual average NAL for TSS that also occurred during the 2015-2016 reporting year. Section XII of the 2015 General Permit requires that, when a discharger exceeds an NAL, the Facility is assigned a Level 1 status as of the subsequent July 1st. 2015 General Permit, § XII. That status triggers the requirement for the Facility to evaluate the cause of the exceedance and measures necessary to eliminate the exceedance by not later than October 1 of that same year. *Id.*, § XII.C.1. A Level 1 ERA Report is then required to be submitted to the SMARTs system no later than January 1. *Id.*, § XII.C.2.

Knife River Construction failed to prepare an ERA Level 1 report addressing its discharges of TSS at a level above the average annual NAL. Because the ERA Level 1 report fails to acknowledge the exceedances of the average annual NAL for TSS, it fails to include any discussion of necessary measures at SS#3. Nor does the report discuss or analyze for either sample location or other drains at the Facility what measures must be implemented to meet the average annual NAL for TSS. Lastly, even for the analysis addressing the instantaneous NAL exceedance at SS#4, the additional erosion controls and drain protections were not sufficient to achieve the average annual NAL for TSS or to comply with the General Permit’s BAT/BCT requirement. Indeed, two samples taken at SS#3 and SS#4 following the Facility’s implementation of additional measures were more than twice as high as the average NAL and the average TSS discharges from the Facility for the 2016-2017 reporting year remained well over twice as high as the average NAL.

Although “[i]t is not a violation of this General Permit to exceed the NAL values; it is a violation of the permit, however, to fail to comply with the Level 1 status and Level 2 status ERA requirements in the event of NAL exceedances.” Fact Sheet, p. 60. Accordingly, CSPA puts Knife River Construction on notice that it has violated and continues to violate the General Permit and the CWA every day that the Facility operates without an adequate Level 1 ERA



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Report for TSS. These violations are ongoing. Knife River Construction is subject to civil penalties for each day it has failed to submit an adequate Level 1 ERA Report.

### **III. Persons Responsible for the Violations.**

CSPA puts DSS Co. dba Knife River Construction, DSS Construction Inc. dba Knife River Company, Knife River Construction – Stockton, Knife River Corporation, Knife River Corporation – Northwest, Steve Essoyan, Steve Azevedo, and Dave Smith on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts DSS Co. dba Knife River Construction, DSS Construction Inc. dba Knife River Company, Knife River Construction – Stockton, Knife River Corporation, Knife River Corporation – Northwest, Steve Essoyan, Steve Azevedo, and Dave Smith on notice that it intends to include those persons in this action.

### **IV. Name and Address of Noticing Parties.**

The name, address and telephone number of the California Sportfishing Protection Alliance is as follows:

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance  
3536 Rainier Avenue  
Stockton, CA 95204  
Tel. (209) 464-5067  
deltakeep@me.com

### **V. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Michael R. Lozeau  
Douglas J. Chermak  
Lozeau Drury LLP  
410 12th Street, Suite 250  
Oakland, California 94607  
Tel. (510) 836-4200  
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### **VI. Penalties.**

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Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Knife River Construction to a penalty of up to \$37,500 per day per violation for all violations. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against Knife River Construction and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Michael R. Lozeau  
Lozeau Drury LLP  
Attorneys for California Sportfishing Protection Alliance

**SERVICE LIST – via certified mail**

Scott Pruitt, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Eileen Sobeck, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Jefferson B. Sessions III, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Alexis Strauss, Acting Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Pamela C. Creedon, Executive Officer  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

**ATTACHMENT A**  
**Rain Dates, Knife River Construction, Stockton, CA**

1/30/2014	4/8/2015	10/14/2016
2/3/2014	4/25/2015	10/15/2016
2/6/2014	6/11/2015	10/17/2016
2/7/2014	10/1/2015	10/27/2016
2/8/2014	11/2/2015	10/28/2016
2/9/2014	11/3/2015	10/29/2016
2/10/2014	11/9/2015	10/31/2016
2/27/2014	11/10/2015	11/20/2016
2/28/2014	11/15/2015	11/21/2016
3/1/2014	11/25/2015	11/23/2016
3/3/2014	12/3/2015	11/27/2016
3/4/2014	12/4/2015	12/8/2016
3/6/2014	12/11/2015	12/10/2016
3/27/2014	12/14/2015	12/11/2016
3/30/2014	12/19/2015	12/15/2016
4/1/2014	12/22/2015	12/16/2016
4/2/2014	12/25/2015	12/24/2016
4/25/2014	12/28/2015	1/3/2017
4/26/2014	1/4/2016	1/4/2017
9/26/2014	1/5/2016	1/5/2017
10/31/2014	1/6/2016	1/7/2017
11/1/2014	1/7/2016	1/8/2017
11/13/2014	1/15/2016	1/9/2017
11/20/2014	1/16/2016	1/10/2017
11/21/2014	1/18/2016	1/11/2017
11/23/2014	1/19/2016	1/18/2017
12/1/2014	1/20/2016	1/19/2017
12/2/2014	1/23/2016	1/20/2017
12/3/2014	1/30/2016	1/21/2017
12/4/2014	2/18/2016	1/22/2017
12/12/2014	3/5/2016	1/23/2017
12/15/2014	3/6/2016	1/24/2017
12/16/2014	3/7/2016	2/2/2017
12/17/2014	3/11/2016	2/4/2017
12/18/2014	3/12/2016	2/6/2017
12/20/2014	3/13/2016	2/7/2017
2/6/2015	3/14/2016	2/8/2017
2/7/2015	4/9/2016	2/10/2017
2/8/2015	4/10/2016	2/11/2017
2/9/2015	4/23/2016	2/17/2017
3/12/2015	5/7/2016	2/18/2017
4/7/2015	5/22/2016	2/20/2017

Notice of Violations and Intent to File Suit



## **ATTACHMENT A**

### **Rain Dates, Knife River Construction, Stockton, California**

2/21/2017	3/25/2017	4/18/2017
2/22/2017	4/7/2017	10/20/2017
3/5/2017	4/8/2017	11/16/2017
3/21/2017	4/9/2017	11/27/2017
3/22/2017	4/13/2017	
3/23/2017	4/17/2017	